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via e-mail (ferguson.vicki@epa.gov)
and FOIAOnline

February 3, 2014

Ms. Vicki Ferguson
Freedom of Information Officer, Mailcode: 8OC
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202-1129

Re: Freedom of Information Act Request

Dear Ms. Ferguson:

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552, and relevant U.S. Environmental Protection Agency (EPA) regulations set forth in 40 C.F.R. Part 2, subpart A, I am writing on behalf of my client, the Sierra Club, to request the following documents:

Requested Documents

1. The documents listed immediately below that are discussed in EPA's February 2, 2001 document entitled "Reissuance of Prevention of Significant Deterioration Permit (PSD) PSD-UO-0001-2001: 00" for the Deseret Generation & Transmission Co-Operative Bonanza Power Plant Unit Number 1: Regarding the Bonanza Power Plant owned by Deseret Generation & Transmission (Deseret) (at pages 12-14):

a. The modified source plan review and draft air permit issued by the

State of Utah for the Bonanza power plant on or around January 2, 1998;

b. An undated submittal, approximately February – March 1998, from Deseret to the State of Utah regarding amendments to the ruggedized rotor at the Bonanza plant and recalculation of hazardous air pollutant emissions;

c. An undated submittal, approximately February 1, 1998, from Deseret to the State of Utah regarding emission limits for NOx emissions;

d. The Approval Order permit and any associated response to comments and/or engineering review/technical support document issued by the State of Utah for the Bonanza power plant on March 16, 1998;

e. The May 20, 1999 submittal from Deseret to the State of Utah regarding changes to the scrubber trays and coal pulverizers;

f. The April 20, 1999 submittals from Deseret to the State of Utah regarding changes to the coal pulverizers;

g. The May 20, 1999 letter from the State of Utah to Deseret regarding the scrubber and coal pulverizer changes;

h. The November 11, 1999 submittal from Deseret to EPA regarding the absorber, baghouse, and turbine;

i. The November 11, 1999 submittals from Deseret to the state of Utah on the planned changes to the pulverizers and digital control system and on the replacement of boiler barrels and tip of burners; and

j. The December 17, 1999 letter from the state of Utah to Deseret regarding Deseret's November 11, 1999 submittals.

2. The following documents pertaining to PacifiCorp's Hunter power plant located in Utah:

a. All documents pertaining to the November 20, 1997 Approval

Order for the Hunter Power plant issued by the Utah Division of Air Quality, including the permit application (Notice of Intent), draft permit, the statement of basis or state engineering review for that permit, all EPA comments and other documents regarding the Approval Order permit, and any other documents or correspondence regarding the November 20, 1997 Approval Order permit;

b. All documents pertaining to the December 18, 1997 Approval Order for the Hunter Power plant issued by the Utah Division of Air Quality, including the permit application (Notice of Intent), draft permit, the statement of basis or state engineering review for that permit, all EPA comments and other documents regarding the Approval Order permit, and any other documents or correspondence regarding the December 18, 1997 Approval Order permit;

To the extent that it is feasible to do so, please provide electronic copies of the documents requested above in order to minimize the expense and burden of copying.

Exempt Records

The President of the United States and Attorney General Holder have issued memoranda to all agencies emphasizing that the FOIA reflects a "profound national commitment to ensuring an open Government" and directing agencies to "adopt a presumption in favor of disclosure." The President has instructed agencies to respond to requests "promptly and in a spirit of cooperation." Presidential Memorandum for Heads of Executive Departments and Agencies Concerning the Freedom of Information Act, 74 Fed. Reg. 4683 (Jan. 21, 2009). The President also called for federal executive departments and agencies to administer the FOIA so as to achieve an unprecedented level of openness and transparency in the work of the Executive Branch, stating that agencies should administer the FOIA with a presumption that openness prevails. *Id.*

Should you decide to invoke a FOIA exemption with regard to any of the requested records, please include in your full or partial denial letter sufficient

information for the Sierra Club to appeal the denial. To comply with legal requirements, the following information must be included:

1. Basic factual material about each withheld item, including the originator, date, length, general subject matter, and location of each item; and
2. Explanations and justifications for denial, including the identification of the category within the governing statutory provision under which the document (or portion thereof) was withheld and a full explanation of how each exemption fits the withheld material.

If you determine that portions of a record requested are exempt from disclosure, please redact the exempt portions and provide the remainder of the record to the Sierra Club at the address listed below.

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(l), the Sierra Club hereby request a fee waiver for all copying costs, mailing costs, and other costs related to locating and tendering the documents, in accord with the attached fee waiver statement.

Sincerely,

A handwritten signature in black ink, appearing to read 'WJ Moore', is written over a horizontal line.

William J. Moore, III

Attachment to FOIA Request Letter: Fee Waiver Request

Sierra Club respectfully requests that EPA waive all fees in connection with this request as provided by 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.107(1). The Sierra Club has spent years promoting the public interest through the development of policies that protect human health and the environment, and has routinely received fee waivers under FOIA.

The Sierra Club is a national, nonprofit, environmental organization with no commercial interest in obtaining the requested information. Instead, the Sierra Club intends to use the requested information to inform the public, so the public can meaningfully participate in the dialog concerning the permitting and operation of coal plants in Utah, their compliance with environmental laws and regulations, as well as their potential impact on the public's health and the surrounding environment. As explained below, Sierra Club's FOIA request satisfies the factors listed in EPA's governing regulations for waiver or reduction of fees, as well as the requirements of fee waiver under the FOIA statute — that "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 40 C.F.R. § 2.107(1).

1. *Whether the subject of the requested records concerns "the operations or activities of the government." The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote.*

Sierra Club's Response: Sierra Club's FOIA request seeks documents related to two air permitting matters in Utah, the reissuance of the Prevention of Significant Deterioration Permit (PSD) permit for Unit 1 of the Deseret Generation & Transmission Co-Operative Bonanza Power Plant and the November 20, 1997 and December 18, 1997 Approval Orders issued for the Hunter Power plant. These regulatory permitting actions are clearly "identifiable operations or activities of the government." Accordingly, Sierra Club's request satisfies this criteria.

2. *Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities.*

Sierra Club's Response: The Sierra Club's FOIA request seeks documents that will provide critical information and data relevant to the permitting process for coal fired power plants in Utah and that should provide meaningful insight into how EPA and the State of Utah, as well as the respective owners and/or operators of the Bonanza and Hunter Plants, analyze significant legal and factual questions related to permitting determinations. Accordingly, the documents sought are very likely to contribute to an understanding of government operations and activities involving air permitting determinations for coal plants in Utah.

3. *Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public will be considered.*

Sierra Club's Response: As described above, the Sierra Club and its members have a longstanding interest and expertise in the subject of coal-generated power. More importantly, Sierra Club unquestionably has the "specialized knowledge" and "ability and intention" to disseminate the information requested in the broad manner, and to do so in a manner that contributes to the understanding of the "public-at-large."

The Sierra Club intends to disseminate the information it receives through this FOIA request regarding government operations and activities in a variety of ways, including, but not limited to, analysis and distribution to the media, distribution through publication and mailing, posting on the organization's website, emailing, and/or list-serve distribution to members.

4. *Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced significantly by the disclosure.*

Sierra Club's Response: Disclosure of the requested information will significantly contribute to public understanding of government operations, specifically, relating to the EPA's and the State of Utah's rational for significant air permitting decisions relating to coal fired power plants in Utah. That issue is itself a significant one for the public, given that air pollution resulting from coal fired power plants can have significant adverse impacts on large numbers of people and the environment.

5. *Whether the requester has a commercial interest that would be furthered by the requested disclosure.*

Sierra Club's Response: The Sierra Club has no commercial interest in the requested records. Nor does it have any intention to use these records in any manner that "furthers a commercial, trade, or profit interest" as those terms are commonly understood. The Sierra Club is a tax-exempt organization under §§ 501(c)(3) and 501(c)(4) of the Internal Revenue Code, and as such has no commercial interest. Sierra Club is seeking the information primarily to promote: (1) compliance with federal environmental laws that are designed to protect the public and the environment from the adverse impacts of pollution and (2) the public understanding of compliance with federal environmental laws and the roles of federal and state regulatory agencies and citizen groups in ensuring compliance with those laws that are designed to protect the public and the environment from the adverse impacts of industrial pollution.

6. *Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure that disclosure is "primarily in the commercial interest of the requester."*

Sierra Club's Response: When a commercial interest is found to exist and that interest would be furthered by the requested disclosure, an agency must assess the magnitude of such interest in order to compare it to the "public interest" in disclosure. If no commercial interest exists, an assessment of that non-existent interest is not required.

As noted above, the Sierra Club has no commercial interest in the requested records. Disclosure of this information is not "primarily" in the Sierra Club's commercial interest. On the other hand, it is clear that the disclosure of the information requested is in the public interest. It will contribute significantly to public understanding of the permitting process applicable to coal fired power plants in Utah.

For the above reasons, Sierra Club respectfully requests a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 40 C.F.R. § 2.120(d) for all copying costs, mailing costs, and other costs related to locating and tendering the documents.